Date of Issuance
December 19, 2016

Decision 16-12-070 December 15, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a Pro Forma Transfer of Control of Charter Fiberlink CA-CCO, LLC (U6878C).	Application 15-07-009 (Filed July 2, 2015)

ORDER MODIFYING DECISION (D.) 16-05-007 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. SUMMARY

In this Order, we dispose of the applications for rehearing of Decision (D.) 16-5-007[1] (or "Decision") filed by the Office of Ratepayer Advocates and Center for Accessible Technology (collectively, "ORA/CforAT") and Entertainment Studios

[1] All citations to Commission decisions are to the official pdf versions which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

Networks and National Association of African-American Owned Media (collectively "Entertainment Studios").

In D.16-05-007, the Commission approved, subject to certain mitigating conditions, Application (A.) 15-07-009 ("Application") filed by Charter Communications, Inc., Charter Fiberlink CA CCO, LLC , Time Warner Cable Inc. ("TWC"), Time Warner Cable Information Services (California), LLC ("TWCIS"), Advance/Newhouse Partnership, Bright House Networks, LLC ("BHN"), and Bright House Networks Information Services (California), LLC ("BHNIS") (collectively, "Joint Applicants") for approval to transfer control of both TWCIS and BHNIS to Charter Communications, Inc. ("Charter"), and for approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC to Charter. Through the transfers requested in the Application, Charter, TWC, and BHN would merge to become "New Charter" (the "Transaction"). The Decision found, "as amended by the conditions imposed herein, the requested transfers satisfy the applicable provisions of [Pub. Util. Code] Section 854 and are in the public interest."[2] (D.16-05-007, p. 2.)

ORA/CforAT and Entertainment Studios timely filed applications for rehearing of D.16-05-007. ORA/CforAT challenge the Decision on two grounds. First, they claim the Decision erred in inadvertently omitting specified conditions associated with the Commission's approval of the Transaction, including those related to conditions involving service quality, semiannual reports to ORA, a customer service survey, and communications with customers with disabilities. Their rehearing application alleged that these were conditions to which Joint Applicants' had offered in their Reply Brief to address ORA's and CforAT's concerns. (ORA/CforAT's Rehrg. App., pp. 4-8.) Second, they challenge the Decision's adoption of a condition which prohibits New Charter from imposing data caps or usage-based pricing for a three-year period, contending that the

[2] Unless otherwise indicated, all code citations herein are to the California Public Utilities Code.

Decision is inconsistent with an FCC order prohibiting the same activity for seven years. (ORA/CforAT's Rehrg. App., pp. 8-9.)

Entertainment Studios raise two issues in their rehearing application. They first argue the Decision violated their due process by failing to consider their opening comments on the underlying Proposed Decision ("PD"). (Entertainment Studios' Rehrg. App., pp. 6-7.) They base this claim on the fact that the Decision references their reply comments, but not their opening comments. (Entertainment Studios' Rehrg. App., p. 8.) Second, they claim the Commission did not fully deliberate an issue they raised in opening comments concerning whether third parties or the public could enforce the various MOUs and agreements between Joint Applicants and some of the other parties. (Entertainment Studios' Rehrg. App., pp. 8-9.) Entertainment Studios seek rehearing "to consider how to timely resolve enforcement issues and to adopt clear, concise and enforceable conditions such as a specific set aside for the carriage of 100% African American-owned channels." (Entertainment Studios' Rehrg. App., p. 8, fn. 21.) [3]

We have reviewed each and every allegation set forth in both rehearing applications. We modify D.16-05-007 to add the conditions raised in ORA/CforAT's rehearing application, to which Joint Applicants had agreed to in their Reply Brief, Appendix A, and which the discussion in D.16-05-007 makes clear should have been reformulated as mandatory conditions. We modify D.16-05-007 to state that Entertainment Studios filed Opening Comments on the PD on May 2, 2015, Media Alliance filed Reply Comments on the PD on May 6, 2015, and Stop the Cap! filed Reply Comments on the PD on May 9, 2015. We do not find grounds for granting rehearing as to the other issue raised by ORA/CforAT or any of the issues raised by Entertainment Studios. Rehearing of D.16-05-007, as modified, is denied.

[3] Joint Applicants filed a Response opposing both rehearing applications.

II. DISCUSSION

A. The Decision erred in inadvertently omitting ordering paragraphs corresponding to new commitments Charter made to accommodate ORA/CforAT's concerns, which the Decision makes clear should have been reformulated as mandatory conditions of approval.

ORA/CforAT contend that the Decision inadvertently omitted Ordering Paragraphs ("OPs") related to conditions involving service quality, semiannual reports to ORA, a customer service survey, and communications with customers with disabilities, all of which they claim Joint Applicants had agreed to in their Reply Brief, and which the Decision's discussion makes clear should have been mandatory conditions tied to the Commission's approval of the requested transfers of control. (ORA/CforAT's Rehrg. App., pp. 4-8 & 10.) ORA/CforAT request these voluntary commitments be added as OPs to D.16-05-007 on the basis that "[w]hile D.16-05-007 refers to these conditions in the body of the Decision, failure to include the conditions in the Ordering Paragraphs results in unenforceable conditions that would result in harm to the California ratepayers if they are not implemented." (ORA/CforAT's Rehrg. App., p. 2.). There is merit to this claim in light of the record and the discussion in the Decision concerning protesting parties' proposed conditions (or mitigation measures) that the Decision stated it would "reformulate…as explicit conditions of approval" in its analysis of Public Utilities Code section 854(c)(8) – mitigation measures to prevent significant adverse consequences which may result from the merger. (D.16-05-007, pp. 56-62.)

1. Joint Applicants accepted in their Reply Brief the conditions that ORA/CforAT request to be added as ordering paragraphs to D.16-05-007.

The record demonstrates that the conditions ORA/CforAT request to be added as mandatory conditions are the same ones offered by Joint Applicants in their Reply Brief "to accommodate concerns raised" by ORA/CforAT and other parties in opening briefs. (*Compare* ORA/CforAT's Rehring App., pp. 4-8 *with* Joint Applicants' Reply Brief, Appendix A; see also Joint Applicants' Reply Brief, pp. 3-8, 92-131, & Appendix A.) Specifically, Joint Applicants' Reply Brief stated,

> New Charter's commitments to lock in the benefits of the Transaction for consumers, which are set forth in Part I.H of the Joint Applicants' Opening Brief, are already substantial. However, *in an effort to demonstrate that they are committed to working with California community groups and regulators, the Joint Applicants have reviewed the conditions requested by other parties in their Opening Brief, and are prepared to agree that New Charter will make substantial and additional, California-specific commitments to accommodate concerns raised by those parties….New Charter will make the following new commitments*: …
>
> - Commit to service quality reporting consistent with applicable G.O. 133-CC (sic) metrics for its interconnected VoIP services for three years and certain additional outage reporting requirements for broadband and VoIP services over the same period.
> - Create and conduct a customer satisfaction survey in conjunction with ORA.
> - Improve New Charter's customer education surrounding battery backup power systems and install such batteries at cost to disabled customers that may have difficulty installing them.
> - Improve the accessibility of its online content and customer communications to persons with disabilities.

(Joint Applicants' Reply Brief, p. 3, emphasis added.) These "new commitments" that Joint Applicants offered were explained in greater detail in Part V of their Reply Brief, and its accompanying Appendix A set forth their specific terms. (See Joint Applicants' Reply Brief, pp. 116-121, 123-125, 127-130 & Appendix A.)

Joint Applicants' Reply Brief made clear that they offered these new commitments to resolve objections other parties raised, including ORA and CforAT, so that the Transaction could be approved expeditiously. Specifically, Joint Applicants stated:

> *In an effort to address other parties' concerns and meet their fundamental objections, the Joint Applicants have taken the significant step of agreeing that New Charter will make these additional commitments*. See part V, infra. *Based on this record, approval of the Transaction should be expeditiously*

> *granted*….It is Joint Applicants' hope that New Charter's additional commitments summarized above and detailed in Part V (and the accompanying Appendix) will substantially satisfy the concerns that still remain.
>
> …CETF and CforAT, for their part, use their briefs to request numerous conditions without even attempting to demonstrate how or why those demands are appropriate under the guiding § 854(c)(8) standard….*Nonetheless, New Charter will seek to accommodate CETF's and CforAT's requests by making many voluntary commitments that address the vast majority of their concerns*….
>
> …The Joint Applicants are particularly encouraged that ORA has put forward a list of requested conditions. While some of these requests are clearly beyond the scope of this proceeding and preempted by federal law, *Joint Applicants have made a good-faith effort to agree to reasonable and appropriate items ORA has requested, even where they do not believe the concerns underlying ORA's requests are warranted*….
>
> *…In short, the Joint Applicants have demonstrated approval of this Transaction–with the substantial commitments they have already made, augmented by their acceptance of many of the additional conditions requested by the parties here–is in the public interest and should be granted without delay*.

(Joint Applicants' Reply Brief, pp. 5-8, emphasis added.) Joint Applicants' Reply Brief thus demonstrates, as ORA/CforAT contend, that Joint Applicants were willing to accept as mandatory conditions those same conditions which ORA/CforAT request in their rehearing application to be added as OPs to D.16-05-007.

2. The Decision's discussion of mitigation measures demonstrates the Commission's intent to impose New Charter's additional commitments, contained in Joint Applicants' Reply Brief, as mandatory conditions of approval.

The conditions at issue in ORA/CforAT's rehearing application are discussed within the Decision's analysis of the public interest criteria in section 854(c)(8). (D.16-05-007, pp. 56-62.) Public Utilities Code section 854(c) states: "[b]efore authorizing the merger, acquisition, or control of any … telephone utility…, where any of the entities that are parties to the proposed transaction has gross annual

California revenues exceeding five hundred million dollars ($500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest." (Pub. Util. Code, § 854, subd. (c).) Paragraph 8 requires the Commission to consider whether the requested transfers "[p]rovide mitigation measures to prevent significant adverse consequences which may result." (Pub. Util. Code, § 854, subd. (c)(8).) The Decision notes that this factor is "one of the key aspects of any merger proceeding before the Commission." (D.16-05-007, p. 56.)

The Decision explains that there were two sets of mitigation measures at issue in this proceeding. The first set, which the Decision describes as "Agreed-Upon Conditions," consists of those conditions contained in Joint Applicants' separate Memorandums of Understanding (MOUs) with the National Diversity Council and Center for Emerging Technology Fund and Joint Applicants' separate agreements with the County of Monterey and the City of Gonzales. (D.16-05-007, pp. 11-14 & 56.) These conditions are reflected in OP 2, subparagraphs (a) through (c):

> 2. The approval granted herein is subject to the following conditions:
>
> a. New Charter, and its regulated entities operating in California, shall abide by all the terms and conditions of the Memoranda of Understanding (MOUs) with the National Diversity Council and CETF.
>
> b. New Charter shall abide by all the terms and conditions of the agreements with the County of Monterey, and the City of Gonzales.
>
> c. Commission staff or any party to the MOUs with the National Diversity Council or CETF or the agreements with the County of Monterey or the City of Gonzales may, at any time during the duration of the MOUs or the agreements, as the case may be, apply to this Commission for an order directing New Charter to perform one or more promises contained in the MOUs or the agreements. Additionally, Commission staff may

> monitor the performance of community beneficiaries who receive funds pursuant to the MOUs or the agreements. New Charter consents to the jurisdiction of this Commission to enter an order enforcing the MOUs or the agreements.

(D.16-05-007, pp. 70-71 [OP 2].)

The other set of mitigation measures are referred to in the Decision as "Proposed Conditions." (D.16-05-007, pp. 56-64.) These were "mitigating conditions" that ORA, CforAT, Writers Guild, and Stop the Cap!, had proposed the Commission adopt if it were to approve the Transaction. (See D.16-05-007, p. 56.) The Decision lists these parties' proposed conditions on pages 56 through 62 and then provides the following discussion:

> Many of the conditions proposed by protesters are reflected in the promises made and assurances given by Joint Applicants. *To the extent that those promises and assurances are responsive to the concerns of the protesters, we will reformulate them as explicit conditions of approval. In addition, we will also impose conditions that are reasonably inferred from those promises and assurances*.

(D.16-05-007, p. 62, emphasis added.) Joint Applicants in their Reply Brief had made "promises and assurances" in the form of "new commitments" that explicitly responded to the concerns raised by ORA, CforAT, Writers Guild, and Stop the Cap!, who were the remaining parties that did not reach MOUs or other agreements with Joint Applicants. (See Joint Applicants' Reply Brief, pp. 116-121, 123-125, 127-130 & Appendix A.) It is thus evident from this discussion in the Decision that the Commission intended to convert these commitments into mandatory ones. (D.16-05-007, pp. 56-42.) Nothing in the remaining parts of the Decision indicates otherwise.

Indeed, other parts of the Decision demonstrate the Commission's intent to hold New Charter to their commitments as part of the Commission's approval of the Transaction. For example, in the Decision's Public Utilities Code section 854(c)(2) analysis, the effect of the Transaction on current ratepayers of the regulated public utilities that are subject to the this proceeding, the Decision states:

> According to Joint Applicants, the parent company merger will lead to significantly improved services to the customers of the licensed subsidiaries. *We will hold them to that statement and require, as a condition of approving the Transaction, a concrete plan for remedying the service deficiencies of their licensed subsidiaries as soon as possible following completion of the Transaction*.

(D.16-05-007, p.37, emphasis added.)

Similarly, in analyzing Public Utilities Code section 854(c)(6), whether the merger is beneficial on an overall basis to the state and local economies and the communities which New Charter would serve, the Decision states:

> …Throughout their respective southern California footprints, the customers of Charter and TWC are effectively foreclosed from obtaining high speed broadband from other than their local provider…. The merger of smaller monopolists into a bigger monopoly does little to worsen the situation of customers who are already faced with take-it-or-leave-it offers from their local cable service provider. Thus while we may deplore the situation in which the existing customers of the merging companies find themselves we cannot say that they are materially worse off as a result of the merger. *What we can do is hold the merging companies to their promise of increased service, fairer pricing, less onerous contracts, and equal access and require them to translate those vague promises to concrete commitments*…."

(D.16-05-007, p. 53, emphasis added [citations omitted].) Further, the Commission noted:

> *…Weighing Charter's commitments to increased Internet speeds, increased numbers of wireless access points, less onerous contracts, more effective competition in the enterprise space, unbundling of services, equal treatment of content providers and greater diversity in hiring, contracting and programming, all of which will be made explicit conditions of approval of the Transaction*, against the increase in concentration of the market for broadband Internet access and the threat of discrimination against competing content creators, we conclude that the benefits of the Transaction outweigh its drawbacks and the Transaction satisfies § 854(c)(6).

(D.16-05-007, p. 54, emphasis added [citations omitted].)

We therefore find that the aforementioned discussion in the Decision evidences the Commission's clear intent to hold Joint Applicants responsible to comply with the new commitments they offered in direct response to concerns ORA and CforAT had raised. As set forth below, we will modify the Decision to correct the inadvertent omissions by adding subparagraphs to OP 2 in the matter set forth below.

B. The Commission was not required to adopt the same conditions as those the FCC imposed concerning data caps and usage-based billing in approving the Transaction; but, the issue is moot given Charter must also comply with the FCC's conditions.

ORA/CforAT's other claim is that the Decision erred by failing to address the May 5, 2016 FCC Order that prohibited Charter from imposing data caps or usage-based billing for a period of seven years in relation to the FCC's approval of the same merger resulting in New Charter ("FCC Order"). Specifically, ORA/CforAT argue, "in order to clarify any legal uncertainty and to make sure that California ratepayers are protected at the same level as protections afforded citizens of other States, D.16-05-007 should be reconciled with the FCC Order by preventing Charter from imposing data caps, usage based billing, and zero ratings for at least seven years." (ORA/CforAT's Rehrg. App., p. 9.) At the same time, they acknowledge that Charter is expected to comply with the FCC Order, but seek rehearing so that the Commission can confirm the consistency to avoid any potential ambiguity. (ORA/CforAT's Rehrg. App., p. 8.)

As a procedural matter, this is a moot issue because the record shows that regardless of the conditions imposed by this Commission, Charter must also comply with the FCC Order. ORA/CforAT's rehearing application acknowledges that "it could be expected that Charter will comply with the FCC order in any event." (ORA/CforAT's Rehrg. App., p. 8.) Joint Applicants' Opening Brief also made clear that "the FCC's conditions would apply to New Charter equally in California, and for the same time period." (Joint Applicants' Opening Brief, p. 7.) And, Joint Applicants' Response to ORA/CforAT's Rehearing Application reiterated this point: "Further, California

customers will automatically benefit from the FCC's requirements because they apply nationwide." (Joint Applicants' Response to ORA/CforAT's Rehrg. App., p. 16.)

On other grounds, ORA/CforAT's argument also fails. The Decision's Ordering Paragraph 2.k speaks to this issue, stating:

> New Charter shall fully comply with all the terms and conditions of the Federal Communications Commission's Open Internet Order, for three years from the closing of the Transaction, regardless of the outcome of any legal challenge to the Open Internet Order. In addition, for a period of not less than three years from the closing of the Transaction, New Charter (a) will not adopt fees for users to use specific third-party Internet applications; (b) will not engage in zero-rating; (c) will not engage in usage-based billing; (d) will not impose data caps; and (e) will submit any Internet interconnection disputes not resolvable by good faith negotiations on a case-by-case basis.

(D.16-05-007, p. 72.) While the Commission may have been guided by the FCC's actions, it was not required to adopt the same measures as the FCC. The Decision confirms that the Commission's analysis of the public interest in the Transaction "does not rely on the grant of jurisdiction from the federal government in [47 U.S.C. § 1302] § 706(a)," but that "it is informed by the legislative judgment embedded in the federal statute, namely, that both state and federal regulators have roles to play in assuring the development of a robust and competitive market for Internet-enabled services." (D.16-05-007, p. 55, fn. 67.) The Decision also reaffirms the ruling in the Scoping Memo, "that the standard of review is whether or not the transaction is in the public interest and that in making that determination the Commission should evaluate the Transaction in accordance with the criteria enumerated in §§ 854(a) through 854(c) of the Pub. Util. Code." (D.16-05-007, p. 20.)

ORA/CforAT fail to demonstrate legal error here. Instead, they re-argue ORA's previous policy position, as evident in this statement in their rehearing application: "As previously stated, ORA recommends the Commission, at a minimum, adopt mitigation measures such as a requirement that Charter impose no data caps, no

usage-based pricing, and no zero ratings until the presence of effective competition in the California broadband market or, if the Commission prefers to set a time-based limit, seven-years after the date the Commission Decision was adopted." (ORA/CforAT's Rehrg. App., p.9.) They cite no authority, either in the FCC Order or other law, which requires a state Commission to follow an FCC Order when reviewing a merger pursuant to state law; nor do they raise any federal preemption claim. As explained, the Commission reviewed this proposed merger pursuant to state law, and thus, it was not required to adopt the same conditions as the FCC.

C. The Decision does not violate Entertainment Studios' due process rights.

Entertainment Studios claim that because the Decision failed to address their comments to the PD, the Commission violated their due process rights. (Entertainment Studios' Rehrg. App., pp. 6-7.) Specifically, they accuse the Commission of ignoring their opening comments, and thus, they were deprived of the ability to meaningfully participate in the Decision. (Entertainment Studios' Rehrg. App., p. 6.) They base this claim on the fact that the Decision references their reply comments, but not their opening comments. (Entertainment Studios' Rehrg. App., pp. 4-5 & 8.) On this basis, Entertainment Studios seek rehearing so that the opening comments may be considered. (Entertainment Studios' Rehrg. App., p. 6.) This claim is without merit.

Entertainment Studios' due process argument rests solely on the fact that the Decision does not mention their opening comments. (See Entertainment Studios Rhrg. App., pp.4-5.) It is true that the Decision neither mentions nor discusses the opening comments filed by Entertainment Studios. (See D.16-05-007, at pp. 67-68.) However, Entertainment Studios' opening comments were received because Joint Applicants responded to them in their reply comments. (Joint Applicants' Reply Comments on PD, p. 15; see also, Docket Card for A.15-07-009 on the Commission's website.) Thus, it appears to have been an inadvertent clerical oversight that there is no

reference to these opening comments in the Decision, and we modify the Decision to state that Entertainment Studios did file opening comments.[4]

As to whether Entertainment Studios was deprived of due process because the Decision fails to mention their opening comments, the answer is no. Due process requires the Commission afford parties adequate notice and the opportunity to be heard.[5] In the instant case, Entertainment Studios were permitted to file opening comments and reply comments, despite the fact that they entered into the proceeding very late. (See Entertainment Studios' Motion for Party Status, filed May 2, 2016; see also, D.16-05-007, p. 68, acknowledging that Entertainment Studios filed Reply Comments.) Like all the other parties, Entertainment Studios were afforded the opportunity to be heard through their opening and reply comments on the PD.

The inadvertent omission of a reference to the opening comments filed by Entertainment Studio in the Decision does not demonstrate a deprivation of due process. All comments filed are part of the administrative record and subject to Commission consideration.

Entertainment Studios further contend the Commission did not fully deliberate an issue they raised in opening comments concerning whether third parties or the public could enforce the various MOUs and agreements between Joint Applicants and some of the other parties. (Entertainment Studios' Rehrg. App., p. 8-9.) Entertainment Studios seek rehearing "to consider how to timely resolve enforcement issues and to adopt clear, concise and enforceable conditions such as a specific set aside for the carriage of 100% African American-owned channels." (Entertainment Studios' Rehrg.

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[4] Further, we note that the Decision does not mention that Media Alliance filed reply comments on May 6, 2015 and that Stop the Cap! filed reply comments on May 9, 2015. Thus, we also modify the Decision to correct these inadvertent omissions as well.

[5] *Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning – Order Modifying Decision (D.) 15-05-008, and Denying Rehearing, As Modified* [D.15-08-008] (2015), p. 3 (slip op.), citing *Railroad Commission of California v. Pacific Gas and Electric Company* (1937) 302 U.S. 388, 393; *People v. Western Air Lines, Inc.* (1954) 52 Cal.2d 621, 632.

App., p. 8, fn. 21.) What Entertainment Studios appear to be contending is that the Decision erred by not having a reference to their proposals set forth in their opening comments, which first appeared 10 days prior to the Commission vote on the PD. This contention has no merit.

There is no legal requirement that the Commission spell out every proposal or position that any party may have made during the proceeding. The Commission is only required to describe how it reaches its determinations, and to provide sufficient findings of fact and conclusions of law. (See Pub. Util. Code, § 1705; see also, *California Manufacturers Ass'n v. Pub. Utilities Commission* (1979) 24 Cal.3d 251, 258-259.)

Entertainment Studios do not offer any legal authority which would establish that the Commission is required to consider every issue a party proposes. To the contrary, *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 541, demonstrates that the Commission does not fail in its responsibilities just because it chooses not to address every single question or issue that a party may want answered. And, the Commission does not need to explain in minute detail why it credits some evidence and discredits others,[6] especially in this case where the purported evidence was presented just ten days prior to the Commission meeting and improperly through comments on a PD. Entertainment Studios offer no reasonable explanation for their failure to participate in the proceeding earlier in the proceeding, as many other parties with similar interests, such as the National Diversity Council, had done. Entertainment Studios fail to show legal error in the Commission's exercise of its discretion not to adopt Entertainment Studios' enforcement or other proposals.

[6] See *In the Matter of the Application of Pacific Bell, a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to reduce the Number of Monthly Directory Assistance Call Allowances, and Adjust Prices for four Centrex Optional Feature – Order granting Limited Rehearing to Modify Decision 99-11-051, and Denying Rehearing as Modified* [D.00-11-042] (2000), p. 5 (slip op.).

Accordingly, the fact that the Commission did not adopt Entertainment Studios' proposals, which were never presented until they filed comments on the PD, does not demonstrate that they were denied due process.

III. CONCLUSION

We modify D.16-05-007 for the reasons discussed above. Otherwise, good cause does not exist for the granting of ORA/CforAT's and Entertainment Studios' applications for rehearing. Therefore, we deny rehearing of D.16-05-007, as modified.

THEREFORE, IT IS ORDERED that:

1. D.16-05-007 is modified as follows:

   a. The second sentence in the first paragraph of Section 6 "Comments on Proposed Decision" on page 65 is modified to read:

      On May 2, 2016, Opening Comments to the Proposed Decision were received from Joint Applicants and the following Intervenors: Media Alliance, ORA, Writers Guild of America, West. Inc. and Greenling Institute (jointly), DISH Network, CforAT, California Emerging Technology Fund ("CETF"), and Entertainment Studios Networks and National Association of African American-Owned Media (collectively "Entertainment Studios"). Opening Comments were received from Stop the Cap! on May 3, 2016.

   c. The first full paragraph on page 68, is modified to read:

      On May 6, 2015, Reply Comments were received from Media Alliance. On May 9, 2015, Reply Comments were received from Joint Applicants, Entertainment Studios Networks and National Association of African American-Owned Media (collectively, "Entertainment Studios"), California Emerging Technology Fund ("CETF"), National Diversity Coalition, Greenlining Institute and Writers Guild of America, West, Inc (jointly), ORA, and Stop the Cap!. No additional changes were made to the decision in response to reply comments.

   c. The following will be added as Finding of Fact 14:

      In an effort to address other parties' concerns and meet their fundamental objections, the Joint Applicants have taken the significant step of agreeing that New Charter will make

additional commitments set forth in Joint Applicants' Reply Brief, Appendix A.

d. Ordering Paragraph 2 of D.16-05-007 is modified to add the following subparagraphs (r) through (x):

r. Charter will provide the Commission and ORA, beginning June 30, 2016, with semiannual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data elements:

i. Service Type (VoIP, Broadband, or Both VoIP and Broadband)

ii. Number of customers affected

iii. Number of residential customers affected

iv. Number of Small Business customers affected

v. Number of Large Business customers affected

vi. Outage Start Date and Time

vii. Service Restoration Date and Time

viii. Duration of outage in total minutes

ix. Location of outage

x. Description of the Cause

xi. Description of the Root Cause

xii Description of the Incident

xiii. Description of the equipment that failed (if any) and location within the network that was impacted

xiv. Methods used to restore the outage (Resolution Method)

s. New Charter will provide a copy of Federal Communications Commission (FCC)Network Outage Reporting System (NORS) reports for New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC.

t. No later than 180 days from the closing of the Transaction, New Charter, in consultation with ORA shall select and retain an independent expert Survey Consultant ('Survey Consultant"), subject to standard confidentiality provisions. This Survey Consultant will not have previously provided any customer satisfaction services or contract work with Charter, Time Warner

Cable, or Bright House Networks in California and shall act independently to develop the survey design and survey questions for a multi-lingual customer satisfaction survey in the New Charter California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from the closing of the Transaction. In addition to English proficient customers, the survey design must also include Spanish speaking customers. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity for maintaining battery back-up. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through virtual or in person meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing of the transaction and will continue for two years. The Survey Consultant shall issue a survey Report on a confidential basis to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted 24 months from the commencement of the surveys.

u. For residential customers with disabilities impairing their ability to install a backup battery (e.g., sight or physical disabilities), New Charter will provide a backup battery at cost for any new installation. This requirement shall remain in effect for 3-years measured from the date of the closing of the Transaction. Additionally, battery backup power units shall include a visible indicator light(s) that allow for customer maintenance when the batteries require replacement. Information on the cost and availability of replacement batteries must be provided to customers and assistance should be provided at the time of installation for any residential customer who is unable to change the battery without assistance. For those customers ordering a backup battery, a question regarding whether such assistance is required should be part

of any residential installation process, so that households that are not capable of maintaining their vital connection to emergency services are not left out.

v. Charter has engaged a consultant to audit, advise and recommend actions to bring Charter's customer-facing charter.net web pages in compliance with the applicable WCAG 2.0AA standards. Following the close of the Transaction, New Charter will develop a plan for improving compliance with WCAG 2.0AA standards and will provide a plan to CforAT. In addition, New Charter will appoint a lead person for customer-oriented content included at www.charter.net who will become familiar with and remain current on WCAG 2.0 AA standards and advise New Charter's Web Content team in meeting such standards. Beginning 180 days after closing, all new California residential customer-oriented pages created by New Charter for the www.charter.net website will meet Web Access Standards, except where technical dependencies limit the ability of new web pages to meet these standards. If there are any such technical limitations, New Charter will document these dependencies and report this information, upon request, to CforAT, subject to standard confidentiality restrictions.

w. New Charter will make available Braille billing, Large Print billing, Spanish Braille billing and Spanish Large Print billing, if requested, to residential customers who previously requested these alternative formats. Residential customers who request to receive bills in alternative formats shall receive other billing and existing customer communications from New Charter in the same format. New Charter's customer bills will contain information about the availability of alternative formats and information on how such material can be requested. Within 180 days after closing, New Charter will, upon request, consult with CforAT regarding existing service communications sent to California residential customers to assess whether and how to include Large Print and these other billing formats described herein, to enhance important service information communications.

x. By July 1, 2017, New Charter will prepare and distribute one or more training modules to educate California employees on important accessibility issues. New Charter will engage a consultant with expertise in consumer accessibility issues to assist in preparation of the training materials. This training will, among other things, address the placement and location of communications equipment at the customer premises (e.g., MTA and battery) to prevent mobility access issues. For three years from the date of the first distribution

on or before July 1, 2017, New Charter will redistribute this training module annually to its California employees and will provide a copy of the training materials, upon request and in advance, subject to standard confidentiality restrictions, to CforAT for comments and recommendations in preparing the training materials before the training is communicated to California employees.

2. Rehearing of D.16-05-007, as modified, is hereby denied.

3. This proceeding, Application (A.) 15-07-009, is closed.

This order is effective today.

Dated December 15, 2016 at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners